

REMARKS

Original claims 1-32 are canceled by preliminary amendment. Claims 33-45 are pending in this application and have been examined. Claim 42 is allowed. Claims 33-41 and 43-45 are rejected. Claims 33, 35, 38, 39, 42 and 44 are amended herein.

Claim Rejections Under 35 USC § 112

Claims 38-41 and 43 are rejected as failing to comply with the written description requirement because the disclosure of the parent application referenced by the declaration does not support the step of rotating such that a bubble agitates the fluid in the container. This rejection is respectfully traversed.

An application when filed may incorporate "essential material" by reference to a pending U.S. application. MPEP § 608.01(p). The parent application referenced in the present declaration (and the specification of the present application as filed) incorporates by reference pending U.S. applications that have subsequently been issued as patents, e.g. at page 2, lines 1-2, reference is made to U.S. Patent Application Serial No. 08/485,452, filed June 7, 1995 (now U.S. Pat. No. 5,945,334) and U.S. Patent Application Serial No. 08/528,173, filed September 19, 1995 (now U.S. Pat. No. 6,140,044). The containers of claims 38-41 and 43 may be of the type described in the aforementioned U.S. patents (see the present specification at page 6, lines 7-10), wherein bubbles in the container "agitate the fluid, increasing the hybridization rate between the targets and complementary probe sequences". (see, for example, U.S. Pat. No. 5,945,334, col. 7, lines 9-18). It is respectfully submitted that this incorporated material in combination with the text of the specification as filed is sufficient to comply with the written description requirement of 35 USC 112, first paragraph. Withdrawal of the rejection is respectfully requested.

The aforementioned incorporated U.S. patents were identified in applicants' IDS filed March 5, 2004, and are already available to and considered by the Examiner on August 24,

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2005. Accordingly, copies are not provided with this response and no affidavit or declaration stating that the copy consists of the same material incorporated by reference is required.

Prior to allowance of the application, the Examiner is requested to enter, by Examiner's Amendment, the U.S. Patent Numbers of the referenced applications in the present specification.

Claims 35, 36, 39, 40, 44 and 45 are rejected as being indefinite because there is lack of antecedent basis for "probe array". All references to "probe array" in the rejected claims have been changed to "polymer array", thereby overcoming this rejection.

Claim Rejection Under 35 USC § 102

Claims 33 and 35-40 are rejected as being anticipated by Wells (U.S. Pat. No. 423,362). Wells is directed to a method for churning milk or cream in multiple simple vessels such as pails, barrels or jars. Vessels containing milk (or cream) are placed in a rotatable frame that secures a lid placed onto one end of the vessel, and the frame is rotated or oscillated to agitate the milk to effect the churning. The Examiner contends that the proteins of milk or cellulose in the wood lid taught by Wells may be considered to be "polymer arrays" within the scope of the claims.

Independent claim 33 has been amended to specify that the polymer array has complementary probe sequences and that the fluid contains at least one target molecule (e.g. as supported by original claim 41). Wells does not disclose or suggest this limitation and is therefore distinguished over amended claim 33 and claims 35-37 dependent thereon. In addition, with respect to dependent claim 35, the chamber faces of the common vessels taught by Wells, e.g. the lid C and bottom of jar B in Fig. 2, are clearly not depicted as "closely spaced-apart" and do not define a "narrow interior" as contemplated by the present invention.

Independent claim 38 has been amended to specify that the fluid reacts with the polymer array. Wells only discloses a physical agitation (churning) of the milk in the vessels. Even if the wood or milk could be considered polymer arrays as the Examiner contends, there is

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no disclosure or suggestion in Wells that the polymer array (e.g. wood) reacts with the liquid (e.g. milk) as set forth in amended independent claim 38 and claims 39-40 dependent thereon. In addition, with respect to dependent claim 39, the chamber faces of the common vessels taught by Wells, e.g. the lid C and bottom of jar B in Fig. 2, are clearly not depicted as "closely spaced-apart" and do not define a "narrow interior" as contemplated by the present invention. For these reasons, withdrawal of the rejection is respectfully requested.

Further Amendment

Claims 33, 38 and 42 have been further amended to more clearly define the subject matter that Applicants consider to be their invention.

Allowable Subject Matter

The Examiner has indicated that claim 42 is allowed. It is respectfully submitted that amendments made to claim 42 do not affect the allowability of claim 42.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,



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